~~1947.~~ **~~File No.~~** S. Bij. 1/47

Examined

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Bijapur Suit.

Civil Suit No.: 464 of 1946

Rahimatbeg Ismailbeg Jamkhandi .. Plff.

Vs.

The Province of Bombay . . . . Defd.

Re- Recovering from Govt. Rs. 240-10-0 as the Balance of Price 50 bags of Jawar which the plff was compelled to sell to Govt. and Rs. 59-12-0 as interest thereon from 12-10-1944 upto the date of the suit.

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Translation of the statement of Mr.Rahimatgeb. I Jamkhandi of Bagalkot made before the Mamlatdar of Bagalkot.

I, Rahimatbeg Ismailbeg Jamkhandi, Caste Musalman, Age 48, occupation trade, residence Bagalkot state as follows on solemn affirmation:-

"I heard the contents of my application made to the Commissioner, S.D.,Belgaum regarding refund of the value (at the rate at which I purchased) of 50 bags of Kharif jowar given back to Government. The statements in the application that the Mamlatdar of Bagalkot forced me to take 110 bags of kharif jowar which were with him and that he assured me that he would take back the remaining bags at the rates are false. As I do not know English and so the application was written by another man, there are misstatements in it. The facts are as stated below;-

As the kharif jowar stored in Government godown was weevilled, the practice was to put it in the cellars under the shops of the rural merchants. These sellars were closed the sealed in our presence and panchanamas to that effect were made. One copy of the panchanama was given to us. In order to save additional expenditure these grains were not remeasured at the time of issue to us. Accordingly, I purchased 110 bags from one of the sellers, As the daily sales in my shop were more than 20 bags, I purchased the stock presuming that the whole stock would be exhausted by the time Rationing was introduced. I had also presumed that if there remained any balance, it would be taken back at the rate purchased by me or that I may be allowed to sell it in the Rationing shop to be given, to me. The grain in question is not the produce of my lands and hence there was no reason to sell the same at the Government purchase rate.

In the above circumstances I request that I may kindly be given back the amount of 50 bags at the rate at which I purchased the grain or the grain may be returned to me for sale in my Rationing shop.

Dated the 4-5-1945.

Heard, read over and found correct.
Sd.R.I.Jamkhandi.

Before me:
Sd.L.L.Vaikunthe.
Mamlatdar, Bagalkot.

True Translation.
12-12-46. Sd.R.C.Alurkar,
For D.M.Bijapur

This relates to the defence of Bijapur Civil Suit No. 464 of 1946. The suit is for recovering from Government Rs. 240-10-0 as the balance of price of 50 bags of Jowar which the plaintiff was compelled to sell to Government and Rs. 59-12-0 as interest thereon from 12-10-1944 upto the date of the suit.

The plaintiff Mr. Rahimatbeg Ismailbeg Jamkhandi was running a Fair price shop at Bagalkot. On 9-7-1944 he purchased 110 bags of kharif jowar from the Government Godown at Rs. 20-13-0 per bag for retail sale to the public. Rationing was introduced in Bagalkot on 16-7-1944 and by that date the plaintiff had disposed of by retail sale 55 out of the 110 bags of jowar purchased on 9-7-1944. The plaintiff was one of the authorised dealers in rationed articles under clause (3) of the Bombay Rationing Order, 1943. He could have been allowed to dispose of the remaining stock of 55 bags in his rationed shop but on 25-7-1944 the

Slip A ——— mamlatdar permitted him to sell only 5 bags in his ration shop and to keep the remaining 50 bags until further orders. The plaintiff was therefore unable to sell that stock. On 2nd August 1944 the

Slip B plaintiff submitted an application to the mamlatdar of Bagalkot and also to the Collector requesting them to take back from him the 50 bags of jowar and to pay him Rs. 1040-10-0 at the rate of Rs. 20-13-0 per bag at which he had purchased them.

Slip C The Mamlatdar recommended that his request may be favourably considered. However on 6-10-1944 the

Slip D District Magistrate directed the Mamlatdar to purchase the stock at the rate then prevailing (Rs. 16-0-0 per bag). The plaintiff thereupon

Slip E represented to the district magistrate that he was put to a loss of Rs. 4-13-0 per bag and

requested that the jowar may be taken from him at the rate at which it had been originally sold to him. The Prant Officer to whom the representation was forwarded for remarks recommanded that it was equitable that persons in standing corn trade who made purchase relying on Government's intention of running fair price shops should not be put to a loss by any technicalities. The District Magistrate however did not agree. Below the office note of 23-1-45 he made a remark to this effect "we cannot pay any more money than the prevailing rate of purchase at the date of purchase". (See the reverse of p. 37 of the file). The plaintiff was informed accordingly on 19-2-1945. The plaintiff then petitioned to the Commissioner, S.D. who after some further correspondence rejected the petition for reasons given in his order dated 29th October 1945.

Slip F

Slip G

Slip H

The plaintiff gave notice of suit on 24th June 1946 and in September 1946 filed the suit in the Civil Court at Bijapur.

Attention is invited to the District Supply Officer's report at pp. 6-7 ante. He proposes that the suit can be defended on the following grounds -

A (1) The plaintiff was not compelled by the Mamlatdar to buy 110 bags nor was any assurance given to him that the balance of that stock remaining in the possession on 16-7-1944 would be repurchased from him;

(2) If he misjudged his turnover or had some other motive unknown to Government which he failed to realize, Government cannot be held responsible for the surplus of his stock when the prices went down.

(3) The stock was purchased from him at Rs.16-0-0 per bag which was the rate fixed at that date for kharif jowar.

(4)

(4) The sale to the plaintiff and the purchase from him were each a complete - transaction.

Even assuming that the plaintiff committed an error of judgment in purchasing a large stock on 9-7-1944 when rationing was shortly to be introduced, it is really difficult to appreciate why he should be penalized for the surplus stock which he was unable to dispose of after 16-7-1944 through no fault on his part. [I have carefully gone through the papers of this case] Not one of the officers concerned has given a single good and valid reason why the plaintiff could not have been allowed to sell the remaining 55 bags in his ration shop. This question was first raised by the Commissioner himself (vide his No. W.W.A.R. 48 dated 8-8-1945). All that the Mamlatdar's and [the Collector's (your)] office could explain was that "it was doubtful whether the applicant could be permitted to utilise the stock purchased for his fair price shop for sale in his A.R.D. shop" (please see pp. 77-83 of the file). Strangely enough, the Commissioner's order dated 29th October 1945 takes no account of this question although it was raised by the Commissioner himself. The reasoning in the concluding sentence of the Commissioner's order that [the Collector (you)] would not have purchased the jowar, had the applicant sought permission in the beginning only to sell it in his ration shop instead of requesting [the Collector (you)] to take it back, is out of place and difficult to appreciate. It overlooks the fact that he had approached the Mamlatdar for permission to sell the surplus stock in his ration shop and that the latter had permitted him to sell only 5 bags and to

Slip J

withhold 50 bags without assigning any reason. When the plaintiff approached the authorities for the disposal of his surplus stock after the introduction of rationing ~~the authorities for the disposal of his surplus stock after the introduction of rationing~~ the authorities could have done one of two things viz. either

(1) permit him to sell it in his ration shop or

(2) to purchase it back from him at the price which he had paid. The authorities however could not have it both ways. That is, they could not withhold permission to dispose of the stock in the shop and at the same time compel him to sell it to Government at a loss. The order of the District Magistrate Magistrate No. S.A. Acts/235, dated 4-10-44 which came into effect on 6-10-1944 shows that at that date the price of Government's jowar was Rs. 20-13-0 per bag in Bagalkot. Yet on the same date the plaintiff was virtually compelled to sell it to Government at a lower rate. On the other hand, in his ration shop the plaintiff could have sold the stock at Rs. 22-5-0 per bag (please see the office note on pp. 29-30 of the file).

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The arguments that he was not compelled to purchase 110 bags by the Mamlatdar, and that he was not given any assurance that the balance of that stock would be repurchased on the introduction of rationing are really beside the point in view of the fact that he was not allowed to sell it in the ration shop. The rationing authorities' attitude left him no alternative but to sell it to Government. In these circumstances the rationing authorities' action is unreasonable and unjust and cannot be justified on any ground, legal or equitable. The Collector should be requested to pay the plaintiff

the difference between the price of fifty bags paid by the plaintiff and the price at which Government purchased the same from him plus cost of the suit.

If this is done the plaintiff will probably give up his plea for interest.

RM
25/3/47

A.L.R I agree. The suit may be compromised as proposed by S.A.S
RR 28/3

R.L.A.

× 3300 dt. 5 4 47

Secy C S D

DR(D) 7.4.

DS DC8(D)

In cases proposed to be [illegible] where suit may not abate on death & there appeal may not object. In papers may be returned with R.C.

DR 8/4

DS CD 8/4

vide S L.D. § 874(4) (write on borrowing)

S. D. 14 APR 1947

[illegible] done 8/4